

200 GENERAL ADMINISTRATIVE REQUIREMENTS FOR FEDERAL GRANTS

GENERAL REQUIREMENTS

This section discusses the general legal requirements for sub-grantees receiving federal assistance. These general requirements are federal policies established by legislative or executive authority, which apply to all federal programs. The requirements are to be reviewed as part of an audit of each state and local government or other entity which receives federal financial assistance. Sub-grantees should adopt policies implementing each of these requirements.

POLITICAL ACTIVITY

Federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

[Hatch Act (5 U.S.C. 1501-1508) and Intergovernmental Personnel Act of 1970, as amended by Title VI of Civil Services Reform Act (Public Law 95-454 Section 4728)]

DAVIS-BACON ACT

Laborers and mechanics employed by contractors or subcontractors to work on construction projects financed using federal assistance must be paid wages not less than those established for the local project area by the Secretary of Labor.

[40 Stat 1494, Mar.3, 1921, Chap. 411, 40 U.S.C. 276A-276A-5]

CIVIL RIGHTS

No person shall be discriminated against on the grounds of race, color, national origin, age, or handicap in any program or activity funded by federal funds. Discrimination on the basis of sex or religion is also prohibited in some federal programs.

[Age-42 U.S.C. 6101 et seq.; Race-42 U.S.C. 2000d; Handicap-29 U.S.C. 794]

CASH MANAGEMENT

The timing between the transfer of funds from the U.S. Treasury and the disbursement of funds by the receiving sub-grantee is to be minimized with proper cash management procedures. Sub-grantees that in turn sub-grant/transfer federal funds to other sub-grantees for final expenditure shall conform to the same standards of timing and amount. Generally, this standard has been interpreted to mean a sub-grantee should have the minimum amount of federal cash on hand needed for expenditures. Excess cash on hand must be repaid to the grantor.

Investment of Federal Funds—Sub-grantees should not have excessive federal cash on hand for investment. If federal funds are invested, interest earnings in excess of \$250 per year must be refunded to the federal government.

RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

[Note: This section is included for reference only. Real property acquisitions using grant funds received from the OPI would be extremely unlikely.]

Occasionally, federal aid programs may require the acquisition of property by a sub-grantee and the subsequent displacement of households and businesses. Property acquired in the administration of federal aid must follow systematic procedures. For example, property must be appraised in the presence of the owner, appraisals must be reviewed, price set and settlements negotiated. Similarly, when relocations are involved, the sub-grantee must, for example, provide assistance in locating replacement housing, assure that it meets acceptable standards and maintain records on all acquisitions and relocations.

[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) P. L. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Act of 1987 (1987 Amendments) P. L. 100-17, 101 Stat, 246-256]

FEDERAL FINANCIAL REPORTS

Most federal programs require the periodic preparation of financial reports. During an audit, the auditor reviews supporting documentation and the timeliness and accuracy of the reports submitted.

[Section 41 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” and Treasury Circular 1075, “Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs”]

APPLICATION PROCESS

APPLICATIONS FOR GRANTS

A grant application is a legal agreement between the applicant and the Office of Public Instruction (OPI). An applicant may be a school district, a consortium, a special education cooperative, or a nonprofit entity.

The OPI requires each of its sub-grant recipients to sign a “Common Assurances” form (see Appendix B), which is the recipient’s agreement to follow important state and federal laws and regulations related to administration of state and federal grant programs. On the Common Assurances form the recipient agrees to the designation of an Authorized Representative (AR). Assurances not common to all programs may be included in individual grant applications.

APPLICATION PROCESS—NONCOMPETITIVE GRANTS

1. Application forms are sent from the OPI to the AR.
2. The AR leads a cooperative effort of administrators, business managers, parents, teachers and other staff in planning the activities of the project and filing the application with the OPI.

3. **APPROVAL:** The OPI approves the application; or

PRELIMINARY DISAPPROVAL: The OPI disapproves the application. If the application is not approved, the OPI will send written notification to the applicant of the preliminary disapproval and the reasons for preliminary disapproval, and will provide the applicant an opportunity to correct deficiencies that caused the disapproval.

FINAL DISAPPROVAL: A preliminary disapproval notice will become final if the applicant does not correct deficiencies in the application or does not request a hearing within the time allowed (see **COMPLAINTS AND HEARINGS PROCESS** below).

4. The OPI sends written notice of approval to the AR.
5. The AR will share all written notices and program instructional materials with other administrators, business manager/clerk and other management official(s), local program/project directors, teachers and other instructional or support staff, as appropriate.

APPLICATION PROCESS — COMPETITIVE GRANTS

1. A notice that application forms are available is sent from the OPI to ARs. Interested ARs request application forms from the OPI.
2. The AR leads a cooperative effort of administrators, business managers, parents, teachers and other staff in planning the activities of the project and filing the application with the OPI.
3. **APPROVAL:** The OPI approves the application; or

DISAPPROVAL: The OPI disapproves the application and sends written notice of disapproval and the reason for disapproval to the AR.

4. The OPI sends written notice of approval to the AR.
5. AR will share all written notices and program instructional materials with the other administrators, business manager/clerk and other management official(s), local program/project directors, teachers and other instructional or support staff, as appropriate.

COMPLAINTS AND HEARINGS PROCESSES

At times, a subrecipient may disagree with the OPI actions or decisions involving federal and state grant programs. In those cases, the sub-recipient may ask for reconsideration of the action or decision by using processes outlined in this section.

The following are examples of situations in which a sub-recipient may enter a complaint and/or request a hearing:

1. The OPI denied a noncompetitive grant application submitted by the entity or did not make an award for the application;
2. The OPI requires certain corrective action on an audit finding or as a result of site visit or other monitoring effort, and the entity does not agree that corrective action is necessary;
3. The entity feels the OPI has otherwise violated a specific federal statute or program regulation;
4. The OPI terminates, in whole, or part, an approved project.

In the event the OPI proposes to deny, in whole or part, any sub-grantee application for noncompetitive federal monies, the district shall be afforded reasonable notice of:

1. The intent to deny the application and the reasons for denial; and
2. The district's right to request a hearing before the OPI prior to final denial of the application.

The application by the sub-grantee may be denied, in whole or part, if the sub-grantee fails to request a hearing.

COMPLAINT PROCESS—Used in cases where a sub-recipient feels the OPI or another organization has violated a specific law or regulation.

A. FILING A COMPLAINT

1. Any individual or organization may file a written, signed complaint with the OPI. The complaint must be addressed to the OPI program director.
2. The complaint must include a statement that the OPI or sub-grantee has violated a requirement of a federal statute or regulation or a state statute or administrative rule that applies to the state or federal grant program.
3. The statement must identify:
 - a. The specific section of the law, regulation or administrative rule that has been violated; and
 - b. The facts upon which the statement is based.

B. OPI RECEIPT AND REVIEW OF COMPLAINT

1. The OPI will review and act on any complaint within 60 days of the date the complaint was received.
2. The OPI may take one or more of these actions to review and resolve the complaint:
 - a. Resolve the complaint based on facts presented;
 - b. Request additional data to be used in resolving the complaint; or
 - c. Conduct an on-site review to collect data to resolve the complaint.

3. If a LEA's decision is being appealed, the OPI will resolve the appeal or provide a decision within the 60 days.
4. If resolution is not possible within 60 days due to exceptional circumstances, the OPI may provide an extension on the time limit for resolution.
5. The OPI will issue the complainant a written notice of resolution.
6. If the OPI does not rescind its action, the applicant may file an appeal to the U.S. Secretary of Education within 20 days of the OPI's ruling on the hearing. If supported by substantial evidence, findings of fact of the OPI will be final. The OPI will provide the complainant with the address of the federal contact person at the time the OPI sends the written notice of resolution.
7. The Secretary may also issue interim orders to the OPI, if necessary, pending appeal or review.
8. If the Secretary determines that the action was contrary to laws or regulations, the Secretary may issue an order to the OPI to take appropriate action. Failure to comply may cause the loss of all federal assistance to the state.

HEARINGS PROCESS—Used in cases when the sub-recipient disagrees with the OPI actions, such as the resolution of an audit finding, additional monitoring required of the entity as the result of an on-site visit or other monitoring effort, withholding of a portion or all of an award because of failure to maintain effort, failure to provide a match, disapproval of a non-competitive grant application, etc.

The hearings process will be as follows: (34 CFR 76.783, 76.401)

1. The applicant must submit a written request for a hearing to the appropriate OPI program director.
2. Special requirements related to audit resolution problems:
 - a. Address the request to the OPI School Accounting Supervisor.
 - b. When controversy over the acceptability of the entity's response to an audit finding is the cause of the request for hearing, the request must be received within 30 days of the date of the Department of Administration's notice stating the audit response is not acceptable.
3. Within 30 days of receiving the applicant's request, the OPI will hold a hearing on the record and review its action.
4. Within 10 days after the hearing, the OPI will issue a written ruling, including findings of fact and reasons for the ruling.
5. If the OPI determines its action was contrary to law or regulations, the OPI will review its action and change its action to be in compliance with law or regulations.

6. If the OPI does not rescind its action, the applicant may file an appeal to the U.S. Secretary of Education within 20 days of the OPI's ruling on the hearing. If supported by substantial evidence, findings of fact of the OPI will be final. The OPI will provide the entity with the address of the federal contact person at the time the OPI sends the written notice of resolution.
7. The Secretary may also issue interim orders to the OPI, if necessary, pending appeal or review.
8. If the Secretary determines that the action was contrary to laws or regulations, the Secretary may issue an order to the OPI to take appropriate action. Failure to comply may cause the loss of all federal assistance to the state.

COMMON ASSURANCES (CA) AND PROGRAM-SPECIFIC ASSURANCES

Sub-grantees receiving education funds must certify, by signature of the board chair or executive officer, that they will abide by legislated requirements as a condition for receipt of the funds (for example, that the funds will be used for the purposes for which they were intended).

Each legal entity that participates in one or more of the programs listed, **must** complete and return this form to the OPI prior to the award of funds for any U. S. Department of Education administered program:

ESEA Reauthorized by the No Child Left Behind Act of 2001, P. L. No. 107-110, 115 Stat. 1425

Individuals with Disabilities Education Act (IDEA), Part B, 20 USC §1400

Carl D. Perkins Vocational and Technical Education Act, 20 USC §2301

Workforce Investment Act, 29 USC §2801

Adult Basic Literacy Education, 42 USC §4959

General Education Provisions Act (GEPA), 20 USC §1221

Pro-Children's Act of 2001, P. L. No. 107-110, §9532, 115 Stat. 1984

Common Assurances and Program-Specific Assurances for Federal Funding (see Appendix B): Statements of required assurances that are common across many programs, as well as assurances specific to individual programs.

All education funds distributed by the OPI are subject to specific state accounting and reporting requirements. In addition, several federal education programs have federal requirements that are the same from program to program. Rather than repeat the same assurance requests for each program, the OPI has gathered together those assurances that are the same for several programs and placed them in one common assurance document. *That document also contains program-specific assurances that are listed under the title of the program.*

Process for Common Assurances:

Each year, the authorized representative for a sub-grantee that may receive education funds from

the OPI, is asked to certify to the OPI that the sub-grantee will comply with the requirements listed in the Common Assurance form prior to receipt of program funds. The list of common assurances and a copy of the signed certification are to be kept on file by each entity. If the assurances are unchanged from one year to the next, the certification will be that no conditions have changed since the original certification of common assurances. When requirements for assurances change, a new Common Assurance listing will be distributed for certification by sub-grantees receiving education funding.

The Common Assurances for federal programs, and specific program assurances for those programs in which a legal entity participates, are accepted as the basic conditions for local participation and assistance in the operation of the projects/programs in which it participates. The recipient agrees to the designation of an Authorized Representative to make representations and commitments on behalf of the applicant under the provisions of each program. The applicant, by signature of its Board Chair or Executive Officer, assures the OPI that the applicant will adhere to the specific program assurances if participating in any of the programs listed beginning on page 4 of the assurances.

Each federal grant award administered by the OPI requires a person to act as the AR. The AR is a liaison between the grantor, the OPI, and the sub-grantee (see Section 700 in this manual).

MAINTENANCE OF EFFORT (MOE)

DEFINITION AND PURPOSE

“Maintenance of Effort” (or “MOE” or “Maintenance of Fiscal Effort”) is required by many grant programs. The purpose of a maintenance of effort requirement is to ensure the recipient of federal funds does not spend those funds in place of state and local dollars. The MOE ensures a recipient spends state and local dollars for the same activities that would be provided if federal dollars were not available. Thus, federal programs supplement the normal activities of the entity and do not replace, or supplant, their normal activities.

Sub-recipients who do not meet MOE requirements may lose eligibility to a portion or all of the grant funds under the program which requires it.

TYPES OF MAINTENANCE OF EFFORT

There are four types of MOE monitored by OPI. They are:

1. Federal ESEA Title MOE is used for the following grants:
 - Title I, Part A, Improving Basic Programs
 - Title I, Part B, Subpart 3, Even Start
 - Title I, Part C, Migrant Education
 - Title I, Part D, Neglected, Delinquent and At-Risk Youth
 - Title I, Part F, Comprehensive School Reform
 - Title II, Part A, Teacher and Principal Training and Recruiting
 - Title II, Part D, Educational Technology
 - Title III, Part A, English Language Acquisition and Language Enhancement
 - Title IV, Part A, Safe and Drug-Free Schools and Communities

Title IV, Part B, 21st Century Community Learning Centers
Title V, Part A, Innovative Programs
Title VI, Part B, Subpart 2, Rural Low-Income Schools (RLI)
The MOE information is provided to the U.S. Department of Education for Title VII,
Indian Education and Title VIII, Impact Aid.

2. IDEA MOE—used for IDEA Part B
3. Carl Perkins Vocational Education MOE—Required on a statewide level, not at individual sub-recipient level.
4. Adult Basic and Literacy Education MOE—Required on a statewide level, not at individual sub-recipient level.

SPECIAL EDUCATION COOPERATIVES/CONSORTIUMS AND MOE

When the prime applicant is a special education cooperative/consortium, MOE is based on the combined activity of the cooperative's or consortium's members. The eligibility for continued funding under a program requires MOE by the cooperative or consortium as a whole. Failure of the combined membership to maintain effort as a cooperative or consortium may result in loss of funding for the cooperative or consortium.

HOW THE OPI MONITORS MAINTENANCE OF EFFORT

Each prime applicant of federal funds is responsible for ensuring the entity maintains effort. As a sub-grantor, the OPI is required to monitor and confirm that each of its sub-recipients maintained effort.

The OPI confirms MOE for school districts and special education cooperatives using data reported on the district's or cooperative's annual Trustees' Financial Summary (TFS) submitted to the OPI each September, and by reviewing audit reports.

TIMELINE FOR MAINTENANCE OF EFFORT

2nd Mon. in Sept.	The OPI receives annual Trustees' Financial Summary (TFS) reports from school districts and special education cooperatives.
December 1	The OPI calculates preliminary MOE and notifies recipients of their status.
By December 20	School districts and special education cooperatives must submit any changes/corrections to data reported on their TFS reports to the OPI. Changes after this date will only be accepted through the hearings process.
After December 20	The MOE calculations are finalized.
April - June	The OPI reports final MOE status to districts as part of the application process for the next year.

SPECIFIC PROGRAM REQUIREMENTS FOR MAINTENANCE OF EFFORT (MOE)

MOE for Federal ESEA Title Grants: (also see APPENDIX C)

A recipient may receive its full allocation if either the combined fiscal effort per student or the aggregate of all expenditures of local funds used for providing a free public education for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding year. The MOE for these programs is calculated using data reported on the school district's Trustees' Financial Summary (TFS) (see explanation of calculation in Appendix C).

Title VII, Indian Education has reductions made at the federal level if MOE is not met.

MOE for IDEA Part B: (also see APPENDIX D)

A recipient may receive its allocation if the expenditures for special education and related services in the preceding year were at least equal to the expenditures for special education and related services in the second preceding year.

An applicant may not reduce its level of expenditures of state or state and local funds below the level of those expenditures for the preceding fiscal year except for those conditions provided for under 34 CFR 300.232 and 300.233.

The MOE for members of a special education cooperative is determined for the cooperative as a whole. Expenditures of the member districts and the cooperative itself are combined to calculate MOE.

The MOE for these programs is calculated using data reported on the school district's Trustees' Financial Summary (TFS) (see explanation of calculations and exceptions in Appendix D).

MOE for Carl Perkins Vocational and Technology Education Act of 1998

The Act uses basically the same "maintenance of effort" language as the 1990 Act to ensure that states continue to provide funding for vocational and technical education programs at least at the level of support of the previous year. The Secretary of Education may grant a waiver of up to 5 percent for exceptional or uncontrollable circumstances (such as a natural disaster or a dramatic financial decline) that affect the state's ability to continue funding at the prior year's levels.

MOE for Adult Basic and Literacy Education

The state is required to match, with nonfederal funds, 25 percent of the total amount expended for adult education and literacy activities. The statute retains the typical "supplement, not supplant" provision. However, the maintenance of effort provisions were revised to provide significantly more flexibility than previously existed. Now if the state fails to maintain effort from the prior year, the Secretary of Education is authorized to provide for pro rata reductions in federal funding rather than a total cutoff.

For more information about MOE requirements, contact the OPI program director or accountant.

MATCHING REQUIREMENTS

Several of the federal grants administered by the OPI require the sub-grantee to “match” the grant funds using local dollars. When a match is required, the recipient must spend the required amount of state and local dollars in order to be eligible to spend the grant funds. If a sub-grantee does not meet the matching requirements of a particular grant, the OPI must disallow the grant expenditures and may require repayment of grant funds used without providing the necessary match.

MONEY USED FOR MATCHING

Grant regulations specify the type and amount of required match. Depending on the program, the match may include cash outlay and/or in-kind contributions. Generally, matching requirements state the recipient must spend state and/or local dollars to provide the match.

“Cash outlay” is the sub-grantee’s cash spending. The cash may have come to the sub-grantee from individuals, public agencies, institutions, private organizations, etc. Although not common, other federal grants may be used as cash outlay to meet matching requirements when authorized by the program’s regulations.

“In-kind contributions” are the value of non-cash contributions made by the sub-grantee, individuals, public agencies, institutions, private organizations, etc. They may include charges for real property and equipment and the value of goods and services directly benefiting and specifically identifiable to the grant program. Although not common, property purchased with other federal grants may be used as in-kind contributions to meet matching requirements when authorized by the program’s regulations.

ACCOUNTING FOR THE MATCH

A sub-grantee is responsible for demonstrating the appropriate matching funds were spent. To do that, a recipient must record expenditures of the grant AND the matching expenditures in enough detail to track the match.

Usually, the clerk tracks matching funds by using the same expenditure program number to record the expenditure of matching funds as is used for expenditure of the grant funds themselves. For example, charges to the Title I Part B, Subpart 3, Even Start grant are recorded using expenditure program 290, so matching funds spent in the general fund would also be charged to expenditure program 290. See Section 3-0600 of the School Accounting Manual for expenditure program code identifiers.

MATCHING REQUIREMENTS BY PROGRAM

Title I, Part B, Subpart 3, Even Start Recipients must contribute a matching share as the federal share decreases each year of the program as follows:

1st year	10% match required
2nd Year	20% match required
3rd Year	30% match required
4th Year	40% match required
5th - 8th Years	50% match required
9th - 12th Years	65% match required

Adult Basic and Literacy Education (ABLE)

The higher of either the matching (25 percent) or the maintenance of effort requirement is the amount the state as a whole is required to meet during a particular fiscal year. This includes a combination of all nonfederal local and state funds.

Learn and Serve Montana

The Learn and Serve Mini-grants have a 10 percent in-kind match.

Gifted and Talented

Gifted and talented grants require 100 percent or more in cash; in-kind match is not allowed by MCA 20-7-903(3).

ESEA TITLE I, PART A COMPARABILITY

A local education agency (LEA) may receive Title I Part A funds only if it uses state and local funds to provide services in project areas that are at least comparable to the services provided in school attendance areas that are not receiving Title I funds. If the LEA selects all of its school attendance areas as project areas, the LEA must use state and local funds to provide services that are substantially comparable in each project area.

A state education agency (SEA) shall consider an LEA to have met the comparability requirement if the LEA:

1. files with the SEA a written assurance that the district has established and implemented a district wide salary schedule, a policy to ensure equivalence among schools in teachers, administrators and auxiliary personnel, and a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; and
2. establishes and implements other measures for determining compliance such as student/ instructional staff ratios.

Records: In Montana each LEA files a written assurance that it has established and implemented a district wide salary schedule and policies to ensure equivalence among schools in staffing and in the provision of materials and supplies. The LEA must also keep records to document that the salary schedule and policies were implemented and that equivalence was achieved among schools in staffing, materials and supplies. If the LEA established and implemented any other measures for determining compliance with comparability such as student/instructional staff ratios, it must maintain source documentation to support the calculations and documentation to demonstrate that any needed adjustment to staff assignments was made.

School districts fall into one of the following categories: (Schools with an enrollment of less than 100 are excluded.)

1. Only one school per level in the district.
2. Districts with more than one school per level; all schools eligible for Title I and all schools being served by Title I.

3. Districts with more than one school per level; all schools eligible for Title I, but only part of them being served by Title I.
4. Districts with more than one school per level; some schools eligible for Title I and some not eligible for Title I service.

Districts in category 1 are not required to file comparability reports. Districts in categories 2, 3 and 4 must file a comparability report (see Appendix B for example of Title I Comparability Report and instructions). An updated comparability report form with instructions is mailed annually to districts required to file this report.

CARRYOVER FUNDS

BASIC CARRYOVER PROVISIONS

“Carryover” funds are grant funds which, if not obligated by the end of the project period, remain available to the sub-grantee for one additional project period.

Grant project periods for most of the grants administered by the OPI begin July 1, and end on either June 30 or September 30. For some grants, funds that remain unobligated at the end of the project period are considered for inclusion in the ensuing year’s project as carryover. That is, the unobligated funds are in addition to the amount awarded for the following year.

If cash obligated during the prior year’s project period is not requested by the time that project’s fiscal closeout report is due, it is also included in the calculation of “carryover” for eligible projects. (See “Fiscal Closeout and Final Program Reports” Section 400.) As a result that cash is no longer available to pay the obligations incurred during the prior year’s project period. The prior year obligations are considered disallowed, and they must be paid from the sub-grantee’s other, nonfederal resources.

The following grants allow carryover:

- ESEA Title I, Part A, Improving Basic Programs
- ESEA Title I, Part D, Neglected, Delinquent and At-Risk Youth
- ESEA Title II, Part A, Teacher and Principal Training and Recruiting
- ESEA Title II, Part D, Educational Technology
- ESEA Title IV, Part A, Safe and Drug Free Schools
- ESEA Title IV, Part B, 21st Century Community Learning Centers
- ESEA Title V, Part A, Innovative Programs
- ESEA Title V, Part D, Subpart 3, Character Education
- ESEA Title VI, Part B, Subpart 2, Rural Low-Income Schools
- IDEA B
- IDEA Preschool

Costs allowable using carryover funds are subject to the same requirements as all other funding under that particular federal program. A recipient must spend the carryover funds in compliance with the same regulations and terms as other program funds in that year’s award.

RESTRICTIONS FOR ESEA TITLES I, II, IV, V and VI

These percentage limitations are applied at the end of the project period based on information submitted on the Fiscal Closeout Report:

- The carryover amount for Title I, Part A, Improving Basic Programs is limited to 15 percent of a district's total allocation for districts that receive an allocation of \$50,000 or more. Districts that receive reallocated funds for Title I are not allowed any carryover.
- The carryover amount is limited to 25 percent of a district's total allocation for the current year (without carryover) for the following grants:
 - ESEA Title II, Part A, Teacher and Principal Training and Recruiting
 - ESEA Title II, Part D, Educational Technology
 - ESEA Title IV, Part A, Safe and Drug Free Schools
 - ESEA Title IV, Part B, 21st Century Community Learning Centers
 - ESEA Title V, Part A, Innovative Programs
 - ESEA Title VI, Part B, Subpart 2, Rural Low-Income SchoolsThis percentage is set in statute for Title IV, Part A and is established by the OPI as "a prudent and justifiable reserve for operating effectively during the succeeding fiscal year" for Title II, Title IV, Part B, Title V and Title VI.
- A district may submit a written request for a waiver to one or more of the ESEA carryover limitations by June 1. In the case of Title I, a request may be granted only once every three years. Criteria for approval of such requests and detailed directions on submission are available from the OPI program specialists for each program.

RESTRICTIONS FOR IDEA PART B AND PRESCHOOL FUNDS

The IDEA regulations do not limit the amount of carryover for Part B or Preschool entitlement funds. Therefore, any "current-year" funds in an applicant's project which were not expended during the project year will be automatically provided to the applicant in the next school year as carryover funds.

"AUTOMATIC" CARRYOVER

The OPI automatically allows sub-grantees to carryover the funds which are subject to the allowable carryover provisions.

To do this, the OPI verifies final carryover amounts for all programs after receiving final fiscal closeout reports and refunds. The OPI determines final carryover amounts and then amends the sub-grantee's appropriate project budget by adding the final carryover amount (up to any percentage limitation as explained above) into the Operating Expenses category of the budget. If an indirect cost rate was included on the proposed and first-approved budgets, the OPI recalculates the maximum amount allowable for indirect cost recovery on the amended award.

The OPI sends a copy of the amended budget—signed, dated, and approved—to the authorized representative and district clerk. An amended Annual Cash Request Form (see Appendix B) must be submitted to request cash available from carryover.

NONPUBLIC SCHOOL PARTICIPATION

Federal statutes require that public school districts have meaningful and timely consultation with NONPUBLIC schools within their boundaries concerning the availability of the various federal programs in which nonpublic schools may participate, whether individually or in a consortium or cooperative. All districts must offer the opportunity for a free and appropriate public education for students with disabilities residing within their boundaries.

Nonpublic School Participation Notification

Annually, public school districts will consult with all nonpublic schools within their boundaries, informing them of opportunities to participate in federal education programs and designing programs that will benefit the participating public and nonpublic school students.

Process for Nonpublic School Participation Notification

In late March, the OPI provides districts with forms to use for nonpublic school participation notification, lists of nonpublic schools reported in October and program descriptions.

Between March and early May, districts will notify all nonpublic schools within their boundaries of a general meeting to explain the federal programs for which nonpublic students are eligible and invite them to participate. Home school parents may have completed check-off forms requesting that the district not contact them at any time in the future about federal program participation.

Districts should maintain records of schools contacted and the method of notification (some use registered mail). Following distribution of the information and timely and meaningful consultation with nonpublic schools, districts return Nonpublic Participation in Federally Funded Programs to the OPI in May, informing the OPI that they have had meaningful consultation with the nonpublic schools within their boundaries and listing which nonpublic school students will participate in the federal programs with the public school district.

BASIC PROVISIONS

The authorizing statutes for most federal programs administered by the OPI require that the state and sub-grant recipient provide for participation by students enrolled in nonpublic schools. Some programs also allow participation by nonpublic school staff.

Sub-grant recipients sign a “Common Assurances Form” which indicates the intention of the recipient to provide equitable services to eligible nonpublic school students under the various programs. Copies of forms are kept on file at the OPI and must be retained by each sub-grant recipient for audit purposes.

ADMINISTRATIVE RESPONSIBILITY FOR NONPUBLIC SCHOOL PARTICIPATION

Sub-grant recipients must fulfill these general administrative responsibilities: (34 CFR 76.651-662)

1. Provide eligible nonpublic school students a genuine opportunity for equitable participation in accordance with federal laws and regulations for a program;

2. Provide nonpublic school students the opportunity to participate consistent with the number of nonpublic school students and their needs;
3. Maintain administrative control over federal funds and federal property used for students enrolled in nonpublic schools;
4. Checklist for Consultations
General Items—To ensure timely and meaningful consultation, a LEA shall consult with appropriate nonpublic officials during the design and development of the district's programs under this part, on issues such as:
 - ✓ How the children's needs will be identified;
 - ✓ What services will be offered;
 - ✓ How, where, and by whom the services will be provided;
 - ✓ How the services will be assessed (academically assessed in Title I, Part A) and how the results of that assessment will be used to improve those services;
 - ✓ The size and scope of the equitable services to be provided to the eligible nonpublic school children, and the amount of funds available for those services;
 - ✓ How and when the district will make decisions about the delivery of services to such children including a thorough consideration and analysis of the views of the nonpublic school officials on the provision of services through a contract with potential third-party providers; and
 - ✓ How, if the district disagrees with the views of the nonpublic school officials on the provision of services through a contract, the LEA will provide in writing to such nonpublic school officials an analysis of the reasons why the LEA has chosen not to use a contractor.
 - ✓ TIMING—Such consultation shall include meetings of district and nonpublic school officials and shall occur before the LEA makes any decision that affects the opportunities of eligible nonpublic school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.
 - ✓ DISCUSSION—Such consultation shall include a discussion of service delivery mechanisms a LEA can use to provide equitable services to eligible nonpublic school children.
5. Assure that program benefits provided for nonpublic school students are comparable in quality, scope, and opportunity to participate as are benefits provided to students in public schools;
6. Assure that if needs of students in nonpublic schools are different than in public schools, the benefits provided are different;

7. Assure that equitable opportunities are provided for students in nonpublic schools as provided to students with the same needs in public schools;
8. Assure the program funds are not used to finance the existing level of instruction or otherwise benefit the nonpublic school;
9. Assure the same average amount of program funds are spent for benefits to nonpublic and public schools, or that the average cost is different because the needs differ from needs of students in public schools;
10. Keep title and control over equipment purchased for use in a nonpublic school;
11. Place equipment and supplies in a nonpublic school for the time needed for the project;
12. Assure that equipment or supplies placed in a nonpublic school are used only for the project and are removable without remodeling at the end of the project;
13. Remove equipment or supplies from a nonpublic school if they are no longer used for the project or if necessary to avoid use on a different project;
14. Assure that program funds are not used for construction of nonpublic school facilities;
15. Use program funds to pay services of an employee of a nonpublic school if the services are performed outside the regular workday and if the employee performs the services under the control and supervision of the public school; and
16. Report nonpublic school fiscal and evaluation data by program to the OPI as required by various program regulations.

SPECIFIC PROGRAM ELIGIBILITY

ESEA Title I, Part A, Improving Basic Programs: Nonpublic school students with academic needs who reside in Title I attendance areas may receive equitable services to the extent possible with funds generated by low-income nonpublic school students.

ESEA Title II, Part A, Teacher and Principal Training and Recruiting: If there are nonpublic schools within a district boundary, the local district must include the nonpublic school staff in its Title II program if the nonpublic school staff wishes to participate. Local education agencies shall consult with appropriate nonpublic school officials during the design and development of the district Title II program.

ESEA Title II, Part D, Educational Technology: School districts must provide opportunity for nonpublic participants in an equitable manner. Grant recipients must notify nonpublic school participants before grant funds will be released.

ESEA Title III, Part A, English Language Acquisition and Language Enhancement: Students identified as immigrant under the Immigration and Nationality Act and who are enrolled in a nonpublic school may be eligible.

ESEA Title IV, Part A, Safe and Drug-Free Schools and Communities: Students and staff from a nonpublic school may be eligible to receive equitable services. The public school district serves as the fiscal agent for the funds and retains fiscal control over the services provided for the benefit of nonpublic school students and/or staff. Forty percent of the allocation is based on the LEA enrollment, including enrollment in nonpublic schools within the boundaries of the LEA. Sixty percent of the allocation is based on the Title I, Part A amount the LEA received the previous year.

ESEA Title IV, Part B, 21st Century Community Learning Centers: Eligible applicants include public schools, community-based organizations, other public or private entities, or a consortium of two or more of such agencies or entities. Award priority is given to eligible entities that serve a high percentage of students from low-income families.

ESEA Title V, Part A, Innovative Education Programs: School districts will consult with the appropriate officials of nonpublic schools wishing to participate in Title V programs to determine services on an equitable basis for the benefit of the students in those nonpublic schools, whether or not the services desired are the same Title V services the district provides to the public school students. The district retains fiscal and administrative control over all materials and services provided for the benefit of nonpublic school students.

IDEA Part B: Public schools are obligated to establish a service agreement for students with disabilities attending nonpublic schools in accordance with the requirements of 34 CFR 300.450-300.462. This agreement must be established with input from the nonpublic school. For those nonpublic schools who indicate a desire to participate in IDEA services, the public school is obligated to make special education services available consistent with its services agreement, but may limit the services provided to an amount calculated under the provisions of IDEA regulations.

Carl Perkins: Nonpublic schools may participate through a public school: nonpublic schools cannot apply for funds directly.

